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OFFICE OF PETITIONS

In re Application of
Martin
Application No. 09/345,202
Filed: June 30, 1999
Attorney Docket No. 30236.30006
For: METHOD AND DEVICE FOR
PREVENTING CHECK FRAUD

Decision on Petition

The above-identified application has been forwarded to the undersigned for consideration on the "Petition for Patent Term Extension," which was received on December 11, 2006, for the above-identified application. See 35 U.S.C. § 154(b) and 37 C.F.R. § 1.701. Further requests or a request for reconsideration of this decision for patent term extension, must be filed under 37 CFR 1.182 or 37 CFR 1.183, and include the required fee.

The petition under 37 CFR 1.181 for patent term extension is dismissed.

Petitioner notes that the above-identified application was filed on June 30, 1999; allowed on November 27, 2006, but was delayed by an appeal to the Board of Interferences and Patent Appeals. Petitioner asserts that the patent to issue from the above-identified application should include at least 632 days of patent term extension. Petitioner notes that the Appeal Brief was filed in the application was filed on October 20, 2003 and that the application was remanded by the BPAI and that a non-final Office action was mailed on July 13, 2005. Petitioner asserts that delay by the Office is from October 20, 2003 until July 13, 2005, which is 632 days.

35 U.S.C. § 154(b)(as amended by the "Uruguay Round Agreements Act," enacted December 8, 1994, as part of Public Law 103-465) provides for patent term extension for appellate review, interference and secrecy order delays in applications filed on or after June 8, 1995 and before May 29, 2000. 35 U.S.C. § 154(b)(as amended by the "American Inventors Protection Act of 1999," (AIPA) enacted November 29, 1999, as part of Public Law 106-113) provides for patent term adjustment for these administrative delays and others in applications filed on or after May 29, 2000. The patent statute only permits extension of patent term based on very specific criteria. The Office has no authority to grant any extension or adjustment of the term due to administrative delays except as authorized by 35 U.S.C. § 154.

The above-identified application was filed on June 30, 1999, which is after June 8, 1995 and before May 29, 2000, and, as a result is an application that may be eligible for patent term extension under 35 U.S.C. § 154.

In order to implement 35 U.S.C. 154(b) (in effect between June 8, 1995 and May 28, 2000), the Office promulgated 37 CFR 1.701(c)(3), which, consistent with the statute, requires a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal Court in an appeal under 35 U.S.C. 145 to be eligible for patent term extension. The application was not issued due to an adverse determination of patentability by the BPAI, was not delayed due to an interference proceeding, nor was it subject to a secrecy order, as a result, this application is not eligible for the extension under 35 U.S.C. 154 in effect on June 8, 1995 and 37 CFR 1.701. While a Notice of Appeal and an Appeal Brief were filed in the application, the application was not remanded to the Examiner as asserted by Petitioner. The Examiner reopened prosecution in response to the appeal brief as stated in the Office action mailed on July 13, 2005. The Office has no authority to grant an extension of the term due to administrative delays except as authorized by 35 U.S.C. § 154. Since, the application was not issued due to an adverse determination of patentability by the BPAI, the application is not entitled to patent term extension under 35 U.S.C. 154 and 37 CFR 1.701.

The delay in issuance of petitioner's application is regretted.

After mailing of this decision, the above-identified application will be returned to Office of Publications for further processing. The patent, if issued, will include an indication that the patent term is extended by zero (0) days.

Petitioner's deposit account has been charged a petition fee.

Telephone inquiries with regard to this communication should be directed to Mark O. Polutta at (571) 272-7709.



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